IN THE

Supreme Court of the United States

October Term, 1949

No. 13

UNITED STEELWORKERS OF AMERICA, C. I. O., *et al.*,
Petitioners

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL STATEMENT FOR THE PETITIONERS

ARTHUR J. GOLDBERG
THOMAS E. HARRIS
Counsel for Petitioners

IN THE

Supreme Court of the United States

October Term, 1949

No. 13

UNITED STEELWORKERS OF AMERICA, C. I. O., *et. al.*,
Petitioners

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL STATEMENT FOR THE PETITIONERS

This statement is submitted in order to call to the attention of the Court certain events which have occurred since petitioners filed their brief.

The petitioners here include both the United Steelworkers of America, CIO (the International Union), and its affiliated Local Unions Nos. 1010 and 64. The International Union has now filed the non-communist affidavits required by Section 9(h), while the local unions have not.

I.

As stated in our brief, the United Steelworkers of America, CIO, has always been able to comply with Section 9(h). Its officers are not Communists and have never been, and they have no sympathy with Communism. Indeed, the Union's Constitution bars Communists from holding office either in the International Union or a Local Union.

The Union nevertheless refused to file the affidavits because it considered that the statutory requirement was an unconstitutional restriction upon freedom of thought, speech and

assembly, and of political activity, which should therefore be resisted as a matter of principle.

However, as we pointed out in our brief, the National Labor Relations Act imposes exceedingly heavy penalties upon unions not complying with Section 9(h), including exclusion from the ballot in NLRB elections. Because of these penalties, the United Steelworkers of America, CIO, encountered increasing difficulty in maintaining its status as bargaining representative in certain plants which it had under contract, and its continued progressive growth was impaired.

Therefore the Executive Board of the International Union, on July 27, 1949, adopted the resolution which is attached hereto as Exhibit A. Paragraph 2 of that resolution reads:

> 2. In order to safeguard the interests of the membership of the Union and to go forward with the organization of the unorganized within our jurisdiction, the International Executive Board directs the international officers of this union and such officers of the various local unions of the United Steelworkers of America as may be designated by the international officers to file non-Communist affidavits required by Section 9(h) of the Taft-Hartley Act.

The resolution, while reiterating the opposition of the Union and its officers to Communism, likewise reiterates their continued "objection, in principle, to the Taft-Hartley requirement that the union officers file non-Communist affidavits." And the resolution directs the general counsel of the Union "to continue to prosecute test suits challenging the constitutionality of the illegal provisions" of the Taft-Hartley Act.

II.

Pursuant to this resolution of the Executive Board, the international officers of the United Steelworkers of America have filed the non-communist affidavits required by Section 9(h).

The officers of the two local unions involved in this suit, Locals Nos. 1010 and 64, have, however, not filed the affidavits. The officers of the International Union have not directed them to file the affidavits, in view of the direction in the resolution

that this suit continue to be prosecuted, and the local union officers have not filed.

We wish to state, however, that whenever the necessities of the situation have so required, the officers of the International Union have directed the officers of local unions to comply with Section 9(h), and many of the local unions of the United Steelworkers of America are, therefore, now in compliance.

We wish further to state that the Inland Steel Company has never refused to bargain with the Union by reason of its non-compliance with 9(h), the present suit having arisen, rather, because of Inland's contention that pensions were not an issue on which an employer was required to bargain with a union. Since the denial of Inland's petition for certiorari (No. 435, October Term, 1948), by which it sought review of the question whether it must bargain on pensions, Inland has at least purported to bargain with the Union with regard to pensions. However no agreement has been reached.

III.

However, the Inland Steel Company has not been under any legal compulsion to bargain with the Union, and still is not, even though the International Union has complied with 9(h), since the two local unions which admit to membership employees in the Inland plants involved in this case are not in compliance.

The Board's Order directed the Company to:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local Unions Nos. 1010 and 64, United Steelworkers of America (CIO),* with respect to its pension and retirement policies if and when said labor organization shall have complied within thirty (30) days from the date of this Order, with Section 9(f), (g), and (h) of the Act, as amended • • •.

• • •

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

---

* Hereinafter called "the Union." [Board's footnote.]

(a) Upon request and upon compliance by the Union with the filing requirements of the Act, as amended, in the manner set forth above, bargain collectively with respect to its pension and retirement policies with the Union as the exclusive representative of all its employees in the aforesaid appropriate unit;

And the Board holds, in such cases, that a union is not in compliance with Section 9(h), and cannot secure redress through the Board's processes, unless the international union and any local union "having members in the appropriate unit" have both complied. *Prudential Insurance Company of America*, 23 LRRM 1331.

The Order in this case is thus not enforceable against the Company, either at the behest of the International or the locals, unless and until the two locals, as well as the International, comply. This Court has held many times that voluntary discontinuance of an unfair labor practice does not bar or render moot a subsequent petition by the Board for enforcement of its order.

We, therefore, do not think that the present case is moot. However, we wished to make full disclosure to the Court of all circumstances which might be considered relevant to that question, and it is for that reason that this supplemental statement is filed.

Respectfully submitted,

ARTHUR J. GOLDBERG
General Counsel
THOMAS E. HARRIS
Assistant General Counsel

APPENDIX A

The following resolution was adopted by the International Executive Board of the United Steelworkers of America, at a meeting held in New York City, July 27, 1949.

Resolution

The United Steelworkers of America has always been and continues to be in the forefront of the fight for Taft-Hartley repeal.

We opposed this evil statute when it was first introduced into the Congress. From the day of its enactment by the reactionary coalition in the 80th Congress, we have struggled by all legitimate means to obtain its repeal.

In the election last November the people voted for Taft-Hartley repeal. They gave a mandate to the 81st Congress to wipe out this evil law and to restore the basic principles of the Wagner Act.

The 81st Congress has failed and refused to fulfill the people's will. The Senate, under Senator Taft's reactionary leadership, has passed a bill which reenacts the Taft-Hartley Act in all but name.

As President Murray has well stated in a recent message directed to all CIO affiliates, apparently we did not win the last election decisively enough. He called upon the CIO and its affiliated membership to engage in political action **now** so that the task can be completed of electing a Congress that will give effect to the will of the electorate.

The United Steelworkers of America pledges its entire membership under President Murray's leadership to complete this undertaking. We shall never rest until the Taft-Hartley Act is completely eliminated and until the Wagner Act, with necessary improvements, becomes, once again, the law of the land.

The history of the last two years under Taft-Hartley Act has more than confirmed all of our fears expressed during the period when this ill-considered statute was being adopted in the Congress.

The Taft-Hartley Act has been used and is being used by unscrupulous employers as a device to destroy unions and to

prevent the organization of the unorganized. Under this evil law government by injunction has been restored and has been employed to an extent and degree heretofore unknown in the history of labor relations in this country. Unfair rules of liability have been imposed against trade unions. Legitimate union practices and procedures have been condemned and outlawed. Union security provisions of vital necessity for the protection of unions and their membership have been eliminated. Company unionism has been revived. The right to picket and to strike has been substantially curtailed. Freedoms essential to our democracy and to a free society have been abridged. The record of the workings of this malevolent law speaks for itself. Day by day its anti-union implications and applications become more apparent.

One of the features of the Taft-Hartley Act is a provision which specifies that even limited services of the Labor Board are available only to unions whose officers file non-Communist affidavits.

This section of the law further provides that non-filing unions are ineligible to petition for Labor Board elections.

It is unnecessary for this Executive Board of the United Steelworkers of America to record its unalterable opposition to Communism. The Constitution of our international union provides that no member shall be eligible for nomination or election or appointment to, or to hold any office, or position or to serve on any committee in the international union or the local union or to serve as delegate therefrom, who is a member, consistent supporter, or actively participates in the activities of the Communist Party or of any Fascist, Totalitarian, or other subversive organization which opposes the democratic principles to which our Nation and our Union are dedicated.

This union and its officers reiterate their opposition to Communism. We objected, and we continue to object, in principle, to the Taft-Hartley Act requirement that union officials file non-Communist affidavits because:

1. In the opinion of the union this is unconstitutional invasion of the political freedom of unions, union members, and union officials.

2. The provision is one-sided in its application to unions

and not to corporate officials, and does not encompass expressly fascist and other totalitarian and subversive organizations.

3. It is part of a viciously anti-union statute, and

4. It has no legitimate place in the Labor-Management Relations Act.

For these reasons the union and its officials have until now refused to comply with the Taft-Hartley non-Communist affidavit requirements.

The Union justifiably had reason to hope and believe that the 81st Congress would repeal this evil law in its entirety and re-enact a fair and equitable labor relations statute in its stead.

The failure of the 81st Congress to comply with the mandate of the last November election makes it apparent that the Taft-Hartley Act and all of its restrictive provisions, including non-Communist affidavit section, will remain on the statute books until a Congress more responsive to the people's will is elected.

The last Constitutional Convention of the United Steelworkers of America, held at Boston, in May of 1948, authorized this Executive Board to determine whether and when the union and its officers should file non-Communist affidavits under the statute.

This Executive Board, conscious of its obligations to the membership of the union, has carefully reviewed the present situation in light of the failure on the part of the 81st Congress to do its plain duty and to repeal the Taft-Hartley statute.

During the past two years, since the enactment of the Taft-Hartley Act, numerous anti-union employers in the steel and fabricating industry have taken advantage of the provisions of this law and the Labor Board's outlawry of non-complying unions to evade their statutory duties to bargain, to prevent this union from organizing their employees and to foist upon them weak and unmilitant craft unions or so-called independent unions which in truth and in fact are company unions.

The United Steelworkers of America is one of the pioneering industrial unions and is formally committed to the cause of industrial unionism. The history of its experience fully demonstrates the wisdom of the founders of the organization in creating this union on an industrial basis. Under the Taft-

Hartley Act the National Labor Relations Board has recently, in direct disregard of its own established precedents, directed elections in so-called craft units in various industries encompassed within the jurisdiction of our union. It has done so regardless of the degree of integration in the industry or the presence of any true craft groups and has excluded the United Steelworkers of America from the ballot of such elections by reason of our non-compliance status.

The activities of anti-union employers have reached such proportions that the continued progressive growth of the United Steelworkers of America is being challenged by the union's inability to use the facilities of the National Labor Relations Board in its present non-compliance status.

The United Steelworkers of America, as a loyal affiliate of the CIO, exists for the primary purpose of protecting its membership and organizing the unorganized and extending to them the benefits of union protection. Nothing can be permitted to thwart these lofty objectives to which our union is dedicated.

Under these circumstances, the International Executive Board, in the interests of protecting the present membership of the union and to furthering the organization of the unorganized within its jurisdiction, at a special meeting convened in New York City on Wednesday, July 27, adopts the following resolution:

Now, therefore, be it resolved

1. The United Steelworkers of America directs its entire membership to the unfinished task of repealing the Taft-Hartley Act and restoring the Wagner Act with improvements designed to safeguard Labor's basic rights. We pledge the resources of this mighty organization and its one-million members to this objective.

2. In order to safeguard the interests of the membership of the Union and to go forward with the organization of the unorganized within our jurisdiction, the International Executive Board directs the international officers of this union and such officers of the various local unions of the United Steelworkers of America as may be designated by the international

officers to file non-Communist affidavits required by Section 9(h) of the Taft-Hartley Act.

3. In directing compliance the Executive Board of the United Steelworkers of America reiterates this organization's objection, in principle, to the Taft-Hartley requirement that the union officers file non-Communist affidavits. We direct the Political Action and Legislative Representatives of this union to continue to work for repeal of this and all other of the provisions of the Taft-Hartley Act. We further direct the general counsel of this union to continue to prosecute test suits challenging the constitutionality of the illegal provisions of this statute.

4. The International Executive Board further directs all district directors, staff representatives and local unions to utilize every legitimate means within their power to oppose the anti-union activities of employers and other groups and to bring into this union all unorganized workers within its chartered jurisdiction.

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 431

UNITED STEELWORKERS OF AMERICA ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board agrees that the questions presented in the Petition for a Writ of Certiorari, filed herein, raise substantial issues warranting review by this Court. If the Petition for a Writ of Certiorari is granted, the Board joins in petitioners' request that the case be assigned for argument together with *American Communications Association* v. *Douds*, No. 336, this Term, in which virtually identical issues are presented.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1948.

815388—48

U. S. GOVERNMENT PRINTING OFFICE: 1948